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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Second periodic reports of States parties due in 1995

Addendum

GERMANY*

[17 December 1996]

CONTENTS

	Paragraphs	Page
Introduction	1 - 7	3
INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION	8 - 44	4
Article 2	8 - 13	4
Article 3	14	6
Article 4	15 - 16	6
Articles 5 to 9	17 - 22	6

* The initial report submitted by the Government of Germany is contained in document CAT/C/12/Add.1; for its consideration by the Committee, see documents CAT/C/SR.128 and 129 and Add.2, and Official Records of the General Assembly, Forty-eighth session, Supplement No. 44 (A/48/44), paras. 161-180.

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CONTENTS (continued)

	Paragraphs	Page
Article 10	23 - 28	7
Article 11	29 - 30	8
Articles 12 and 13	31	9
Article 14	32 - 40	9
Article 15	41	11
Article 16	42 - 44	11

Appendices

I. Accusations of ill-treatment by the police 12

II. Treatment of aliens in detention awaiting deportation 14

Introduction

1. The Government of the Federal Republic of Germany herewith submits the second periodic report in accordance with article 19, paragraph 1, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The Convention entered into legal force in the entire State territory of Germany on 1 November 1990 after Reunification. The initial report was submitted to the Committee in 1992.

3. The structure of this supplementary report is in line with the general guidelines for the form and contents of periodic reports which are to be submitted by the States party under article 19 of the Convention (CAT/C/14).

4. The report is restricted to the developments and events which have taken place since the initial report was submitted, to which reference is made in other respects. The general description of Germany contained in the core document should also be referred to, especially the part on the general legal framework within which human rights are protected.

5. The Federal Republic of Germany has placed its identification with human rights and the inviolability of human dignity as supreme values at the peak of its Constitution, the Basic Law. Thus, torture is abhorred under constitutional law as one of the most serious attacks on human dignity conceivable. For persons in State detention, this is given concrete form by article 104, paragraph 1, second sentence, of the Basic Law, which provides that detained persons may not be subjected to mental or physical ill-treatment. An advanced, flexible system of legal remedies and appeals ensures effective control of officeholders, since any person may have recourse to the courts in cases of actual or even only alleged violations of the prohibition of torture.

6. Adherence to the prohibition of torture in Germany is subject to international control. Germany is a signatory State to the European Convention for the Protection of Human Rights and Fundamental Freedoms dated 4 November 1950. Under article 3 of this Convention, no one is to be subjected to torture or to inhumane or degrading treatment or punishment. From the outset, the Federal Republic of Germany subjected itself to the competence of the European Commission for Human Rights to receive and examine applications (art. 25), as well as the jurisdiction of the European Court of Human Rights (art. 46). With effect as of 1 November 1994, the Ninth Protocol to the Convention entered into force for Germany which, inter alia, also enables the applicant himself or herself to call upon the Court. To date, no cases of a violation of article 3 of the Convention by Germany has been ascertained.

7. Germany is also a party to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment dated 26 November 1987. In the context of the programme of regular visits by the European Committee for the Prevention of Torture (CPT) which exists under this Convention, a delegation visited Germany between 8 and 20 December 1991.

In its report dated October 1992 (annex 1a),* the Committee found that no accusations of torture had been submitted to the delegation in the establishments which they had visited and that there were no other indications of torture in Germany. The CPT listed a series of recommendations, comments and requests for information. With its statement on the report (annex 1b) and the forwarding of the information asked for by the Committee, and in a follow-up report, the Federal Government availed itself of the opportunity to continue the dialogue with the CPT which had started during the visit. It also consented to the publication of the Committee's report, together with the Government's response. During the period between 14 and 26 April 1996, the CPT delegation visited Germany once again. The report concerning this visit is not yet available.

INFORMATION ON NEW MEASURES AND NEW DEVELOPMENTS RELATING TO THE IMPLEMENTATION OF THE CONVENTION

Article 2

8. As was stated in detail in the initial report, and in presenting the report, domestic implementation of article 2 is ensured, inter alia, by provisions contained in the Criminal Code (Strafgesetzbuch [StGB]).

9. Section 340 of the Criminal Code, concerning bodily harm committed in office, is one of the most important of these provisions. In the Act on the Suppression of Crime (Verbrechensbekämpfungsgesetz) dated 28 October 1994, which was also a reaction to the increase in xenophobic attacks in Germany, the punishment threatened in the criminal provisions relating to bodily harm were tightened up. In the course of these amendments, the maximum sentences provided for in section 340 of the Criminal Code were also increased and the cross-references contained in this provision adjusted in line with the amendments to the general offences of bodily harm. The provision now reads:

"Section 340

"(1) A public official who commits, or permits to be committed, bodily harm during the exercise of his duties, or in connection herewith, shall be punished by between three months' and five years' imprisonment. In less serious cases, the punishment shall be up to three years' imprisonment or a fine.

"(2) In cases of dangerous bodily harm (section 223a), the punishment shall be between six months' and five years' imprisonment, in less serious cases up to five years' imprisonment or a fine. In cases of particularly serious bodily harm coming under section 225 subsection 1, the punishment shall be imprisonment of not less than one year, in less serious cases between six months' and five years' imprisonment. In cases falling under section 225 subsection 2, the punishment shall be imprisonment of not less than two years, in less serious cases between three months' and five years' imprisonment."

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* The annexes referred to in the present report can be consulted in the files of the United Nations Centre for Human Rights.

10. The provisions to which reference is made read as follows:

"Section 223a

"(1) If the bodily harm has been perpetrated by means of a weapon, in particular a knife or other dangerous implement, or by means of a treacherous assault, or by several people jointly, or by means of treatment endangering life, the punishment shall be between three months' and five years' imprisonment.

"(2) The attempt shall be punishable.

"Section 224

"(1) If the bodily harm results in the victim losing an important limb, the sight of one or both eyes, his hearing, speech or fertility, or in substantial, lasting disfigurement, or in continuing physical and/or mental deterioration, paralysis or mental illness, the punishment shall be between one and five years' imprisonment.

"(2) In less serious cases the punishment shall be between three months' and five years' imprisonment.

"Section 225

"(1) Anyone who causes one of the consequences designated in section 224 subsection 1, at least recklessly, shall be punished by between 1 and 10 years' imprisonment, in less serious cases between 6 months' and 5 years' imprisonment.

"(2) Anyone who intentionally or knowingly causes one of the consequences designated in section 224 subsection 1 shall be punished by between 2 and 10 years' imprisonment, in less serious cases imprisonment from 1 to 5 years."

11. No other legal amendments have been carried out since the first report.

12. As has already been mentioned in the introduction, the organs of the European Convention on Human Rights have to date found no case of a violation of the prohibition, as set out in article 3 of the Convention, of torture or inhuman or degrading treatment or punishment by Germany. The case which was still pending with the European Court of Human Rights at the time when the initial report was presented has now been concluded. It was found that Germany had not violated the Convention. The subject-matter of the proceedings was the accusation that the applicant had been ill-treated by the pol e whilst being apprehended. No accusation of torture was made. In the vie of the Court, the facts which were determined did not lead to the conclusion that the injuries which the applicant had suffered were the consequence of the use of disproportionate force.

13. In May 1995, Amnesty International submitted a report entitled "Foreigners as victims - police ill-treatment in the Federal Republic of Germany" discussing more than 70 of the incidents of which the organization

had become aware where in its view German police officers had treated people in a disproportionate and unjustified manner in exercising their duties or had subjected detained persons to cruel, inhuman or degrading treatment or punishment. In two cases the ill-treatment had allegedly been so serious as to be equivalent to torture. These accusations are given separate treatment in appendix I to this report.

Article 3

14. The legal situation described in the initial report continues to apply. In Germany, it is therefore still the case that no alien may be deported to a State where there is a real danger of his being subjected to torture or where he is wanted for a criminal offence and the danger of the death penalty exists.

Article 4

15. With the exception of section 340 of the Criminal Code, which was already dealt with at article 2, the legal situation is unchanged.

16. According to the latest available criminal prosecution figures, which only refer to the old Federal territory, i.e. the territory of the Federal Republic of Germany prior to Unification, in 1993 there were 31 convictions in respect of bodily harm caused in office (section 340 of the Criminal Code). The observation made in the initial report should be repeated here that in practice these are not typical cases of torture. Rather, the few convictions also covered teachers who had exercised an unauthorized right of chastisement on pupils. No convictions for extraction of testimony under duress (section 343 of the Criminal Code) were recorded in the statistics for 1993.

Articles 5 to 9

17. The legal situation has not changed since the first report.

18. It should be pointed out in this context that Germany supports the work of the courts of the United Nations in respect of violations of human rights, in particular in cases of torture. The Federal Government considers international criminal jurisdiction to be necessary everywhere where adequate criminal prosecution is not ensured at national level.

19. Germany therefore helped to initiate the decision to set up the International Criminal Tribunal for the Former Yugoslavia, which opened its doors in the autumn of 1993, and also makes an internationally recognized, ongoing contribution to the practical implementation of its work. Germany is one of the States which have already adopted a separate statute on cooperation with the Tribunal. On the basis of this Act, which entered into force on 14 April 1995, close cooperation is ensured between the German judicial authorities and the Tribunal. As well as executing requests for mutual assistance from the Tribunal, this also includes transferring suspects to the latter. This has already taken place in one case at the request of the Tribunal.

20. It is also worth mentioning the financial contribution made by Germany to the International Criminal Tribunal for the Former Yugoslavia. Because it pays its contributions on time, Germany is de facto the second highest contributor to the United Nations Protection Force budget after Japan (DM 544 million as of the autumn of 1995), and has and will continue to help finance the International Criminal Tribunal.

21. In the light of the tragic events in Rwanda, the Federal Government also supported the setting up of a separate ad hoc tribunal for that country by the Security Council. Following the election of the judges by the General Assembly in May 1995, the Tribunal was constituted on 27 June 1995 at The Hague. Germany, which at present is not a permanent member of the United Nations Security Council, is also, inter alia, supporting the Tribunal in taking up its functions as soon as possible. In this context, the Federal Government welcomes the fact that the Tribunal's criminal prosecution authority has now started its work.

22. Additionally, the Federal Government supports the project for a United Nations permanent criminal tribunal. It is due primarily to the initiative of Germany that the United Nations International Law Commission has prepared a complete draft statute for a permanent criminal tribunal. The Federal Government is in favour of finishing the draft statute rapidly.

Article 10

23. As was stated in the initial report, trainees for suitable professions receive instruction regarding the prohibition of torture.

24. In accordance with the division of competences contained in the Basic Law, training of the groups of individuals listed in article 1 is incumbent partly on the Federation and partly on the Länder. Both the Federation and the Länder are making continuous efforts to improve training in line with the aims contained in article 10.

25. In police work, insufficient preparation for particularly difficult situations, such as work in certain high-tension areas in the drugs scene, increases the danger of the police behaving incorrectly. This also applies to contact with foreigners, especially where ethnic conflicts from home countries are transferred to Germany or if foreigners are hardly able to speak German. In the light of this, and as a reaction to individual cases of unlawful conduct by police officers (see appendix I to this report for more details on this), the Länder have scrutinized the general training plans and the training courses for police officers, and where necessary have adapted them to the increased demands faced by police officers today. Training in conflict avoidance and conflict-solving, as well as improving police officers' communication skills, is being given even more emphasis than previously, in particular in training for police officers working in acute problem areas or in special functions. There is also an increase in contacts with ethnic and social minorities and fringe groups, and the organizations representing their interests, in order to achieve a better understanding of their situation and their conduct.

26. Several measures undertaken by one Federal Land, which was particularly accused of incorrect behaviour by its police, are exemplary and by no means definitive. In this Land, several projects in the future training of police officers, in particular in units which are stationed in social flashpoints, are being carried out under the responsibility of agencies which are outside the police force. Three projects are being carried out with academic support in connection with one selected police station each. On the basis of an examination of the situation in the station and the area for which it is responsible, taking several weeks, in particular in the light of conflicts between various ethnic groups, special one-week training courses were designed in order to train officers to deal with people in extreme situations. Furthermore, a series of seminars is being organized to improve officers' abilities in the areas of communication and coping with stress, which is intended to help to defuse potential conflict situations.

27. In October 1994, Working Group II of the Conference of Ministers of the Interior proposed a research project which was to be concerned with specific causes and manifestations of racism and xenophobia in the police. The results of this research project have now been published and exonerates the police forces from the accusation of widespread xenophobia. Although there is no systematic pattern of xenophobic attacks by the police, individual cases may have occurred. It is, however, possible to identify structures which increase the danger of prejudices and xenophobic attacks. At the same time, in recent years there have been a large number of training initiatives aimed at better preparing police officers for contact with individuals of foreign origin and for the suppression of xenophobic crime.

28. In the area of prison staff training, it should be mentioned that in the new Federal Länder, prior to accession to the Federal Republic of Germany, it was not ensured that sentences were executed in accordance with the rule of law. Training of prison staff is still under particular scrutiny there. These Länder are now training their prison staff in accordance with the training provided in the old Federal Länder. Brandenburg, Saxony and Thuringia have now issued Training and Examination Codes which largely correspond to the provisions which apply in the old Federal Länder. In the other Länder, regulations on this matter are presently being drawn up. In part, the old Länder still offer assistance in training and further training.

Article 11

29. The details stated in the initial report with regard to the general system, which serves to examine the effect of the existing provisions, remain effective.

30. Detailed scrutiny of the measures carried out to protect persons in police custody against ill-treatment took place, for instance, in the statement of the Federal Government concerning the 1992 report of the European Committee for the Prevention of Torture in the light of the recommendations made by the Commission. In this respect, reference should also be made to the reactions to the accusations of ill-treatment by police officers dealt with in appendix 1.

Articles 12 and 13

31. The legal situation described in the initial report continues to apply.

Article 14

32. The observations made in the initial report are still valid. Furthermore, reference should be made to the following points:

Victim Compensation Act

33. The Act on Compensation for Victims of Violent Acts - Victim Compensation Act (Opferentschädigungsgesetz - OEG) in the version dated 7 January 1985, lastly amended by the Act of 21 July 1993, imposes a duty on the State to provide maintenance for victims of intentionally committed violent acts. The Act therefore also covers torture. That said, no such cases have yet been reported to the competent authorities. It is irrelevant to the award of compensation whether the offender acted as a private individual or was actually or allegedly exercising a State duty.

34. The aim of this Act is to compensate for the health and economic consequences of bodily harm caused by violent acts. Separate compensation from the State is ensured, going beyond that of the general social security systems and welfare. The extent of the benefits awarded under the Act are in line with the Act on Maintenance of Victims of War dated 22 January 1982 - Federal Maintenance Act (Gesetz über die Versorgung der Opfer des Krieges - Bundesversorgungsgesetz), lastly amended by the Act of 15 December 1995, which governs maintenance of those injured in war and of their surviving dependants and, under the social law on compensation, also applies to benefits awarded to other groups of individuals (such as those injured in performing military or alternative service, and those injured by inoculations, and their surviving dependants). It is characteristic of this benefit system that the benefit is awarded as various individual benefits in accordance with the extent and seriousness of the consequences of the damage and the need of the individual, and that in cases of serious damage it can therefore total a considerable amount which is equivalent in principle to full compensation for the damage to health. Damages for pain and suffering may, however, not be claimed under the Victim Compensation Act. By means of the Second Amending Act to the Victim Compensation Act dated 21 July 1993, further groups of aliens who are lawfully resident in Germany and are victims in the meaning of the Victim Compensation Act have a right to compensation payments retroactively to 1 July 1990. The extent of the payments in such cases corresponds to the duration of lawful residence in Germany. Aliens who have already lived in Germany for more than three years may claim all the individual benefits provided for in the Act. The Act is implemented by the authorities of the Länder. The benefits are granted on request.

First Act on the Abrogation of Injustice committed by the SED (Socialist Unity Party of Germany)

35. This Act is primarily intended to abrogate the injustice committed by the criminal justice system in the former German Democratic Republic. It is a

part of the effort to deal with the past of the German Democratic Republic. It is not possible to undo past injustices, but the Federal Government could not and did not wish to accept the results of this injustice.

36. The Act offers both financial compensation and maintenance benefits to those who were worst affected under the unjust SED regime by deprivation of liberty which was not in line with the rule of law. This is in addition to rehabilitation. These payments are made on condition of the deprivation of liberty having been incompatible with major principles of the rule of law. They also benefit individuals who suffered long-term damage to their health because of the strict conditions of detention in the internment camps of the Soviet military force in the Soviet Occupation Zone/German Democratic Republic or in German Democratic Republic prisons, including damage caused by torture.

37. According to the Act, financial compensation of DM 300 is paid for each month of wrongly suffered deprivation of liberty. Additional financial compensation of DM 250 for each month of detention which was begun is paid to applicants who remained in the former German Democratic Republic after their release for long-term disadvantages suffered as a result of detention (discrimination in work and in social life). Furthermore, individuals in particular need may be awarded further financial support the extent of which is determined on an individual basis in accordance with the nature and the extent of the economic damage done (presently up to DM 8,000 per year). In connection with article 14 of the Convention, it should be pointed out that there is a regulation according to which all victims whose health suffered during detention receive maintenance in accordance with the Federal Maintenance Act (Bundesversorgungsgesetz). This includes, inter alia, disability pensions, payment for loss of earnings and health care. Surviving dependants may also receive benefits in accordance with the Federal Maintenance Act.

38. In the new Federal Länder, roughly 142,000 requests for rehabilitation under criminal law were filed between 1990 and December 1995, of which roughly 132,000 cases had been dealt with by 31 December 1995. Compensation for lost capital and support payments amounting to roughly DM 625 million had been paid out by the Federation and the Länder by 1995 under the Criminal Law Rehabilitation Act.

Treatment centre for victims of torture

39. Beyond its duties under article 14 of the Convention, the Federal Government supports rehabilitation for victims of torture who come to Germany as refugees. Thus, the Federation provides DM 900,000 per year towards the work of the treatment centre for victims of torture in Berlin, where counselling and physical and social therapy are offered, involving a large amount of staffing and time. In 1993, a total of 212 persons were treated at this centre.

Voluntary fund for victims of torture

40. Finally, it should also be pointed out that Germany provided the United Nations Voluntary Fund for Victims of Torture with DM 180,000 per year in 1995 and 1996.

Article 15

41. The information provided in the initial report applies with regard to this article.

Article 16

42. The legal situation described in the initial report largely still applies. Attention is drawn to the tightening up of sentencing in section 340 of the Criminal Code, which was already pointed out in reference to article 2, which covers not only cases of torture in the meaning of article 1 of the Convention, but also applies to other manifestations of cruel, inhuman or degrading treatment.

43. With regard to the requirement stated in article 16, paragraph 1, first sentence, to comply also with the obligations contained in articles 10, 11, 12 and 13 with regard to other manifestations of cruel, inhuman or degrading treatment, please refer to the information provided concerning those articles.

44. Accusations have been levelled recently against Germany by non-governmental organizations concerning the treatment of foreigners by the police and conditions in detention awaiting deportation. Appendices I and II to this report contain detailed statements on these questions.

Appendices

I. ACCUSATIONS OF ILL-TREATMENT BY THE POLICE

1. The provisions contained in the initial report and in this follow-up report designed to prevent torture and other cruel, inhuman or degrading treatment or punishment apply to police officers in the same way as to all other German officeholders. Police work in particular entails a considerable potential for conflict, so that police officers are particularly frequently faced with the decision of whether and to what extent the use of force is suitable.

2. In recent years, accusations have been forthcoming from various quarters that German police officers had used excessive force when making arrests, especially against foreigners, or that they had ill-treated them in police custody. Thus, in one report Amnesty International speaks of 70 cases reported to the organization between January 1992 and March 1995.

3. When the initial report was presented in 1992, there was already talk of two cases of alleged ill-treatment by German police officers. In accordance with its wishes, the Committee was later informed of the course and the results of the investigations. Further cases were the subject-matter of inquiries made by the Special Rapporteur of the Commission on Human Rights with regard to torture, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Rapporteur on extrajudicial, summary or arbitrary executions. The Federal Government has provided detailed answers to all inquiries and has made comprehensive observations regarding the cases which were submitted.

4. Domestically, among other bodies, the Domestic Affairs Committee of the German Federal Parliament, the Permanent Conference of the Interior Ministers and Senators of the Länder, as well as the Conference of Ministers of Justice of the Länder, have discussed the accusations. The Länder in question have also made observations to Amnesty International regarding the cases described. In addition, in one Land a Parliamentary Committee of Investigation has been established.

5. The Federal Government is also taking the accusations very seriously and has investigated them in cooperation with the competent Länder. In doing so, it found that investigations had been initiated in all cases which had been reported. Of the 20 cases which were listed in the AI report, 8 were terminated when the proceedings were discontinued by the public prosecution office, and one was terminated by the court which had jurisdiction, when refused to initiate main proceedings on the basis of the charge filed by the public prosecution office. One set of proceedings ended with an acquittal. In one other set of proceedings a conviction was handed down. Four sets are still pending with the court, whilst in five sets the public prosecution office is still investigating. In particular, the two sets of proceedings in respect of which Amnesty International speaks of ill-treatment equivalent to torture have not been concluded. In the case which ended in a conviction, the disciplinary proceedings which were initiated are still pending. In the case where the court which has jurisdiction refused to initiate the main proceedings on the basis of the charge filed by the public prosecution office,

the victim was awarded compensation by the civil courts because of the injuries suffered. Criminal prosecution was not possible here because it was not possible to prove which of the police officers concerned had caused the victim's injuries. This point was not relevant in the compensation proceedings, which were directed against the Land in question.

6. Mention should also be made here of the case of a 16-year-old Kurd of Turkish origin who was found by the police affixing posters for a Kurdish organization which is prohibited in Germany, and was killed by a shot from the firearm of a police officer who was trying to apprehend him. The public prosecution office presumes that during the scuffle the police officer's pistol slipped out of its holster and that he tripped whilst picking it up. This is when the shot is said to have gone off which killed the Kurdish juvenile. The public prosecutor filed charges against the police officer for involuntary manslaughter, and the main trial is expected to take place in the first half of this year. The Federal Government has informed, among others, the Special Rapporteur on extrajudicial, summary or arbitrary executions of this case in detail.

7. The investigations carried out into the accusations which have been made have revealed on the whole that in cases where the investigations in fact point to misconduct on the part of police officers, they are unfortunate individual cases which cannot be said to constitute a general trend.

8. In the future, too, each individual suspicious case will be investigated with the necessary care and attention and, where required, punishment will be imposed. Misconduct and attacks by police officers in the course of their duties are prosecuted by the public prosecution authorities, even where the suspicion is minimal. Against the background of the incidents which have been described and the corresponding recommendations made by Amnesty International, the Federal Government has scrutinized the provisions under current criminal law and the law of criminal procedure. In doing so, it has come to the conclusion that the law as it stands properly guarantees that the public prosecution offices act comprehensively where there is sufficient suspicion of ill-treatment of individuals by police officers. In accordance with section 152, subsection 2, and section 160, subsection 1, of the Code of Criminal Procedure (Strafprozeßordnung - StPO), the public prosecution office is obligated to initiate investigations and to prosecute as soon as it becomes aware of a suspicion that a criminal offence has been committed, i.e. of ill-treatment by police officers. This ensures that when it hears of ill-treatment by police officers the public prosecution office is immediately obligated to investigate all aspects of the offence. A public prosecutor who, in contravention of the principles of truth and justice, for instance fails to prosecute a crime would be guilty of being an accessory after the fact whilst in office (section 258 a of the Criminal Code). If the public prosecution office does not head the investigation itself, the investigation is in part carried out by a police office in another district.

9. Some of the Federal Länder concerned have taken the incidents which have been described as a reason to develop their training and further training programmes. The information provided under article 10 should be referred to in this respect.

II. TREATMENT OF ALIENS IN DETENTION AWAITING DEPORTATION

1. Various accusations have been levelled recently at Germany regarding the treatment of aliens in detention awaiting deportation.

A. Legal basis for deportation

2. Deportation is governed by sections 49 et seq. of the Act on the Entry and Residence of Aliens on Federal Territory - Aliens Act (Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet - Ausländergesetz - AuslG) dated 9 July 1990, last amended by the Act of 28 October 1994. The full text of these provisions is provided in annex 2.

3. Deportation is understood to be the coercive enforcement of the exit of an alien. In accordance with section 49, subsection 1, of the Aliens Act, in conjunction with section 42 of the same Act, it is dependent on:

(a) The alien being obligated to leave Germany;

(b) This obligation to leave the country being enforceable; and

(c) There being no guarantee that this obligation will be fulfilled voluntarily, or if it appears necessary for reasons of public security and good order for the exit to be supervised.

4. Deportation generally requires a warning to have been issued in advance and a date set for departure (section 50, subsection 1, of the Aliens Act).

5. Because of the division of competences contained in the Basic Law (art. 83), the Länder are competent for carrying out deportations.

B. Legal basis for detention awaiting deportation

6. If an alien's duty to leave is enforceable, as a rule he or she is to be taken into detention awaiting deportation if the reasons for detention apply which are contained in section 57, subsection 2, Nos. 1 through 5, of the Aliens Act. These are:

(a) If the alien's duty to leave the country is enforceable because of illegal entry;

(b) If the period to exit has expired and the alien has changed his or her address without reporting the change;

(c) If he or she was not found at a time announced for deportation;

(d) If in the past he or she has evaded deportation by other means; or

(e) If a justified suspicion exists that he or she wishes to evade deportation in the future.

7. Detention awaiting deportation of an alien who is to be deported is conditional on an order by a judge. The Land immigration authority

responsible for deportation has merely a corresponding right to make a request. Detention awaiting deportation may initially be ordered for a maximum period of up to six months. It may be extended by a maximum of 12 months only in cases where the alien prevents his or her deportation by, for instance, delaying the issuance of documents needed for the journey home by intentionally providing false information regarding identity or origin (section 57, subsection 3, of the Aliens Act).

8. In accordance with section 57, subsection 2, third sentence, of the Aliens Act detention awaiting deportation may not be ordered if it is established that deportation cannot be carried out within the following three months for reasons not brought about by the alien. It is also not permissible to order detention awaiting deportation if the alien has been granted residence in Germany on the basis of provisions under asylum law. A legal amendment is, however, presently being prepared - a draft bill from the Federal Council is presently before the German Federal Parliament to the effect that under certain circumstances detention awaiting deportation may be continued or ordered even if an asylum application has been filed.

9. If for legal, humanitarian or political reasons it is not possible or desirable for deportation to be executed, the alien is to be granted temporary suspension of deportation. In such a case the immigration authority will not request detention awaiting deportation, and certainly no judge will order such detention.

C. Duration of detention awaiting deportation

10. In practice, the duration of detention awaiting deportation generally depends on the time needed to obtain documents allowing the person to travel home. Other difficulties occur when aliens have destroyed their documents or provide no information, or incorrect information, regarding their identity or origin. Careful, and hence possibly time-consuming, scrutiny by the consulates of the destination country are a consequence of the aliens' own conduct. As a rule, however, the statutory maximum of 18 months is normally not used up by any means, even in such cases.

D. Conditions of detention

11. Because of the above-mentioned division of competences contained in article 83 of the Basic Law, conditions of detention are a matter for the Länder. In most Länder, detention awaiting deportation is executed in prisons, in sections which are separate from other convicts and remand prisoners. Conditions of detention here are largely identical to those imposed on other inmates to the extent that this is compatible with the nature of detention awaiting deportation. In this way, it is also ensured that prison officers are available who are suitably qualified to deal with persons who have been deprived of their liberty. The officers are particularly experienced with regard to the multiplicity of religious, cultural and linguistic particularities of foreign inmates. In principle, persons in detention awaiting deportation have at their disposal assistance, treatment and care to the same extent as all other inmates, unless the purpose and character of detention awaiting deportation make this impossible. Several Länder have created separate institutions for detention awaiting deportation

which are specifically designed to cope with the needs of such detainees and which make it possible for care to be even more specific. Where complaints were reported by detained persons with regard to the conditions of detention, these have been consistently investigated. Where they have proven to be substantiated in individual cases, remedies were created without delay.

E. Deaths in detention awaiting deportation

12. The accusations against Germany were also caused by isolated cases where people died in detention awaiting deportation. The Federal Government takes these incidents seriously and investigates them in conjunction with the Länder, which are responsible for detention awaiting deportation. It has been revealed that during the period of the report 11 persons have died in such detention. One person died of natural causes, and there were 10 cases of suicide. The public prosecution office initiated proceedings to investigate the deaths with regard to all of the cases. There were, however, no indications of criminal conduct or of violations of official duties by those providing supervision.

13. There was more publicity concerning the case of a Nigerian who died in August 1994 at Frankfurt/Main Airport while being deported immediately before his aeroplane to Nigeria was due to take off. After a total of five unsuccessful attempts to deport him, which he had emphatically resisted in each case, a further attempt was to be made on that day to return him to Nigeria. Because he had once more offered considerable physical resistance, the doctor accompanying him had given him a sedative injection. He died shortly afterwards. Two independent post mortems showed that from a medical point of view the sudden death by heart failure was caused by a previously unknown, serious heart disease, probably ultimately set off by the extreme emotional stress he underwent at the time of the deportation. The investigation into this case has now been concluded. The proceedings initiated in respect of officers of the Federal Border Guard were discontinued because there was not sufficient suspicion of a criminal offence having been committed. A charge of failure to provide assistance was filed in October 1995 with Frankfurt/Main local court against the emergency doctor who treated him. A decision has not yet been taken in respect of the opening of the main trail. The Federal Government has reported on this matter in detail to the Special Rapporteur on extrajudicial, summary or arbitrary executions.

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